IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

WP(C).No. 20390 of 2007(B)

PETITIONER:

ARUN SEKHAR. R., S/O. S. RAJASEKHARAN NAIR, AGED 30 YEARS, H.S.A. (HINDI), V.H.S.S.KARAVARAM, KALLAMBALAM, TRIVANDRUM DISTRICT, RESIDING AT RAJI SADANAM, NEAR TOWN U.P.S., KILIMANOOR.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)
SRI.S.HARIKRISHNAN

RESPONDENTS:

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1. **STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVT. OF KERALA, DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT, TRIVANDRUM.**

2. **THE DIRECTOR OF PUBLIC INSTRUCTIONS, TRIVANDRUM.**

3. **THE DEPUTY DIRECTOR OF EDUCATION, TRIVANDRUM.**

4. **THE D.E.O., ATTINGAL.**

5. **THE MANAGER, V.H.S., KARAVARAM, KALLAMBALAM, ATTINGAL.**

BY GOVERNMENT PLEADER SMT. M.R. SREELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 20390/2007(B)

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT. P1	**:**	**COPY OF THE APPOINTMENT ORDER.**
EXT. P2	**:**	**COPY OF THE APPROVAL ORDER.**
EXT. P3	**:**	**COPY OF THE CIRCULAR AND THE FORWARDING LETTER.**
EXT. P4	**:**	**COPY OF THE REPRESENTATION DT. 3.8.2005 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
EXT. P5	**:**	**COPY OF THE LETTER NO. B5/3141/06 DT. 16.6.2006.**
EXT. P6	**:**	**COPY OF THE REPRESENTATION DT. 15.11.2006 SUBMITTED BY THE PETITIONER AND 13 OTHERS.**
EXT. P7	**:**	**COPY OF THE JUDGMENT DT. 21.12.2006 IN W.P. NO. 34234/2006.**
EXT. P8	**:**	**COPY OF THE G.O. (Rt) NO. 2199/2007/G.Edn. DT. 21.5.2007.**
EXT. P9	**:**	**COPY OF THE REPORT OF THE PRINCIPAL, KARAVARAM VHSS DT. 18.6.2007.**

// True Copy //

P.A. to Judge.

dvs

S.SIRI JAGAN,J

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W.P.(C).No.20390 of 2007

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Dated this the 19th day of October, 2007

JUDGMENT

Petitioner was appointed as H.S.A(Hindi) in the 5th respondent's school against a retirement vacancy, vide appointment order dated 02.06.2004. It was approved by the Educational Authorities. Petitioner was also paid salary 2.06.2004 onwards. Petitioner's probation was declared and the three increments were also granted. While so the 4th respondent citing a circular No.H1/20811/05/DPI dated 04.05.2005 informed the Manager that appointments made in the school with effect from 28.06.2002 would be illegal. In the above circular, the D.E.O directed the Headmasters not to draw salary of teachers appointed after 28.06.2002. The petitioner has not received salary from July 2005 onwards in view of the above circular and direction. The petitioner's representation in this regard before the Government was also rejected by Ext.P8 order. The petitioner is challenging Exts.P3 and P8 orders. Ext.P3 is the order by which the DEO directed the Headmaster not to draw salary of the teachers. The petitioner submits that

petitioner was appointed in the school validly and he has not committed any mistake. There was a regular vacancy also, to which only the petitioner was appointed. That being so, respondents 1 to 4 could not have validly withheld the salary of the petitioner is the submission made.

2. The learned Government Pleader would submit that by virtue of G.O.(P).No.178/02/G.Edn dated 28.6.2002, certain schools were compulsorily required to appoint protected teachers in the vacancies which arises subsequent to that date. In view of the difficulties expressed by the managements in this regard, the Government by G.O.(P) No.46/2006/G.Edn dated 1.02.2006 permitted to regularise appointment of teachers included in the list prepared for the purpose, provided the manager has appointed atleast one protected teacher. On enquiry it was revealed that 5th respondent has not appointed any protected teacher in his school as required under the above Government Order. It is in the above circumstances that the salary due to the petitioner was withheld contends the Government Pleader.

3. I have heard the learned counsel for the petitioner as also the learned Government Pleader. The Government Orders referred to above are not under challenge before me. That being so, the 5th respondent was bound to appoint atleast one protected teacher in his school so that the appointment made by him subsequent to issue of the Government Orders could be requlatised. That being so, the appointment made in violation of the said Government Orders cannot now be regularised. As such I do not find anything wrong with the impugned orders.

4. However, the learned counsel for the petitioner submits that now that a new manager has taken charge and he is prepared to appoint one protected teacher in accordance with the above said Government Orders, the petitioner's claim for regularisation may be considered in accordance with the said Government Orders. If the 5th respondent files a representation in this regard before the first respondent, the first respondent shall consider the same and pass appropriate orders thereon as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment. If the Government

is inclined to accept the said proposal of the manager the petitioner's appointment shall be regularised and salary also shall be disbursed provided the petitioner had worked during the relevant period.

The writ petition is disposed of as accordingly.

S.SIRI JAGAN, JUDGE

dvs